
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

SAMUEL A. NICOSIA,

Plaintiff,

v.

LVNV FUNDING, LLC; SEAN UMIPIG;
SEAN MORRISSEY; and JOHNSON
MARKS, LLC,

Defendants.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:24-cv-00483-RJS-CMR

Chief District Judge Robert J. Shelby

Magistrate Judge Cecilia M. Romero

Plaintiff Samuel A. Nicosia initiated this pro se action against Defendants LVNV Funding, LLC, Sean Umipig, Sean Morrissey, and Johnson Marks, LLC on July 3, 2024.¹ The same day, Nicosia filed a Motion for leave to proceed in forma pauperis under the relevant statute, 28 U.S.C. § 1915.² The court assigned Magistrate Judge Cecilia M. Romero to review the Motion.

In a Report and Recommendation issued on July 30, 2024, Judge Romero recommended the court deny Nicosia's Motion.³ The Report also recommended the court dismiss the action without prejudice if Nicosia failed to prepay the full civil filing fee of \$405 within 30 days of the Report.⁴ Judge Romero warned Nicosia he would be required to file any objections to the Report within fourteen days, and that "[f]ailure to object may constitute a waiver of objections upon subsequent review."⁵

¹ Dkt. 1, *Complaint*.

² Dkt. 2, *Application to Proceed in District Court Without Prepaying Fees or Costs*.

³ Dkt. 7, *Report and Recommendation Denying Motion for Leave to Proceed in Forma Pauperis* at 1.

⁴ *Id.* at 2.


⁵ *Id.* at 3.

Federal Rule of Civil Procedure 72(b)(2) allows parties to file “specific written objections to the proposed findings and recommendations” within fourteen days after being served with a copy of the recommended disposition.⁶ When no objections are filed, the Supreme Court has suggested no further review by the district court is required, but nor is it precluded.⁷ This court reviews for clear error any report and recommendation to which no objections have been raised.⁸

Sixteen days have passed since the Report was filed and the court has not received any objections from Nicosia. Additionally, Nicosia has prepaid the full civil filing fee.⁹ Accordingly, this court reviews Judge Romero’s Report for clear error. Having carefully considered the Report, the court finds no clear error. Therefore, the court ADOPTS the Report in full.¹⁰ For the reasons set forth in the Report, Nicosia’s Motion is DENIED without prejudice.

SO ORDERED this 15th day of August 2024.

BY THE COURT:



ROBERT J. SHELBY
United States Chief District Judge

⁶ Fed. R. Civ. P. 72(b)(2).

⁷ See *Thomas v. Arn*, 474 U.S. 140, 149 (1985) (“The [Federal Magistrate’s Act] does not on its face require any review at all, by either the district court or the court of appeals, of any issue that is not the subject of an objection.”).

⁸ See, e.g., *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999) (“If no objection or only partial objection is made [to a magistrate judge’s report and recommendation], the district court judge reviews those unobjected portions for clear error.”) (citations omitted); see also Fed. R. Civ. P. 72(b) Advisory Committee’s Note to 1983 Amendment (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citing *Campbell v. U.S. Dist. Court for N. Dist. of Cal.*, 501 F.2d 196, 206 (9th Cir. 1974), *cert. denied*, 419 U.S. 879).

⁹ See Dkt. 8, *Payment Record*.

¹⁰ See Dkt. 7.